

(1996) 10 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Criminal Rev. No. 42 of 1996

State of Himachal Pradesh

APPELLANT

Vs

Kartar Singh and Others

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(1), 320(2), 320(8), 320(9)
Hindu Marriage Act, 1955 — Section 13B, 23(2)
Penal Code, 1860 (IPC) — Section 307, 498A, 506

Citation : (1997) CriLJ 2321 : (1997) 4 RCR(Criminal) 608

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Advocate : Indar Singh, General and M.L. Chauhan, Assistant Advocate General, for the Appellant; Yoginder Paul, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—Heard learned counsel for the parties and with their assistance, I have also gone through the records of this case.

2. In order to properly appreciate the case, it is necessary to state a few facts in the peculiar background and circumstances of the case. A writcn complaint was made by one Smt. Ranjana Kumari, wife of Kartar Singh, who is son of respondents Jai Singh and Brahmi Devi. The case of the complainant in the plaint dated 23-12-1994 addressed by her to the Superintendent of Police, Bilaspur was that she was married to KartarSingh 1? years ago and a child is there from this wedlock. According to her, the respondents along with one Babli, son of Mehar Singh, started harassing her by saying that her parents have given very less dowry. At such point of time, a demand of Rs, 10,000/- was made, otherwise she would be done to death. This demand was fulfilled by her by bringing Rs. 10,000/- from her parents and the same was handed over to Kartar Singh, respondent. In these circumstances, peace prevailed for some time. However, again they started unnecessarily beating her and further compelled her to bring

more dowry. Again she came to her parental house and on 1-12-1994, a further sum of Rs. 5,000/- was withdrawn by her father from Cooperative bank and this amount was also handed over to respondent No. 1 Kartar Singh, but the lust for dowry of the respondents was not satisfied. She had even gone to the extent of complaining that at one point of time, the respondents had entered into a bargain for selling her off at Swarghat but she having come to know in time, saved herself by going to the house of her relations. Again on 19-12-1994, Kerosene oil has been stated to be sprinkled on her and respondents were about to set her on fire when she ran away from the house. However, she was caught hold of by them and her clothes drenched in Kerosene oil were taken back by them. Again on 22-12-1994, the respondents gave beatings to her and put her in taxi along with her daughter and left her on road of her parental house after pushing them from taxi and throwing her as well as her minor daughter there. It was in these circumstances that from the respondents she apprehended danger to her life and she prayed for initiating action against the respondents. On the basis of said complaint, F.I.R. No. 138 of 1994 under Sections 498-A and 506 of the Indian Penal Code was registered at Police Station, Kot-Kehloor. After completion of the investigation, challan was filed under Sections 498-A/506/307 of the Indian Penal Code in the Court of Chief Judicial Magistrate, who vide order dated 21-9-1995, committed the respondents to the Court of Sessions Judge, Bilaspur since the offence u/s 307 of the Indian Penal Code was exclusively triable by the said Court. The respondents appeared in the Court of Sessions on 29-9-1995. When the matter finally came up on 30-1-1996 before the Court of Sessions at Bilaspur, two applications were filed i.e. one by Smt. Ranjana Kumar (Ex. PA) and another by the respondents (Ex. PB). Both these applications are dated 30th January, 1996. Complainant-Ranjana Kumari, in her application (Ex. PA) stated that respondent-Kartar Singh is her husband. She had gone to her parental house at village Bamta, Pargana and Tehsil Sadar, District Bilaspur, when her father enquired from her as to whether she had adjusted in village, as she was resident of city. On such inquiry, she had informed her father that it will take some time for her to settle in village. At such point of time on account of some mis-understanding, her father lodged a report in police whereas she had no intention to lodge any such case. In these circumstances, she had prayed that she had no intention to lodge the complaint. Statement of complainant-Ranjana Kumari was recorded on the same date i.e. 30-1-1996 wherein amongst other things, she had stated on oath that she is living peacefully at her in-laws place and she has given birth to a child who is about 5 months old, she had shown her willingness to stay at her in-laws place and she did not want to continue with the case since she want to keep good relations with her in-laws so that there is no future problem in her family life. Statement of father of the complainant-Ranjana Kumari was also recorded, who had acknowledged the statement of his daughter and had further pointed out that his daughter as well as her children are being looked after well and he was satisfied that they would be looked after properly in future also. Keeping in view the future of the girl, he sought relief of the Court for compounding the offence. Statements of the respondents were also recorded,

who admitted (he factum of the settlement and further assured the Court that she would not be harassed in future.

3. In the aforesaid circumstances, the Sessions Judge below vide order dated 30-1-1996 allowed the prayer and in terms of compromise, Ex. PB and statements of the parties, he allowed the offences to be compounded and discharged the respondents. It is this order of discharge which is impugned by the State in the present revision petition. Before taking up the case, at this stage, it is necessary to refer to the provisions of Section 320 of the Criminal Procedure Code. u/s 320 Sub-section (1), certain offences are enumerated under the Indian Penal Code and in column 3 thereof it is also stated as to the persons by whom the such offence may be compounded. Under Sub-section (1), it is evident that the offences can be compounded without leave of the Court, Whereas on the other hand, under Subsection (2) of Section 320 of the Criminal Procedure Code, offences are enumerated as also the persons by whom those may be compounded but are compoundable with the permission of the Court before which any such prosecution for such an offence is pending. Thus, it is evident that legislature in its wisdom has specifically carved out two situations, one where the offences are compoundable without the leave of the Court and others, though are compoundable, but with the permission of the such Court where the prosecution is pending for such offences. Section 320 Sub-section (9) is to the following effect :

320. x x x x x x x x

Sub-section (9) No offence shall be compounded except as provided by this section.

Section 320 clearly indicates that no offence is compoundable except as provided in Section 320. It is also not in dispute that the offence under Sections 498-A and 307 are not such offences which are either compoundable with or without the permission of the court. Thus, it is obvious that both these offences are non-compoundable and Sessions Judge below had no jurisdiction to have granted permission to compound these offences and in these circumstances, it is not possible to uphold the said order.

4. Learned Advocate General appearing on behalf of the State pointed out and rightly so, that in the face of express bar of Section 320(9), the permission to compound the offences is not only illegal but is expressly barred and thus the impugned order, according to him, was liable to be set aside. There can be hardly any dispute on this legal proposition. Although learned counsel for the respondents pointed out that no doubt, Subsection (9) of Section 320 expressly bars non-compounding of offences which do not find place in Section 320 (1) & (2) Cr. P.C. yet, according to him, this revision petition was not maintainable because u/s 320(8) Cr. P.C. composition of offence u/s 320 has got the effect of acquittal of accused with whom the offence has been compounded. Though, prima facie the argument appears to be attractive yet, it is devoid of any merit.

In this behalf it may be appropriate to mention that Sub-section (8) of Section 320 of the Criminal Procedure Code clearly states that composition of offence under the said Section shall have the effect of an acquittal, thus, it is obvious that it is acquittal by fiction of law and is a case of deemed acquittal. Further unless the offence was one, as specified u/s 320(1) or 320(2) of the Criminal Procedure Code, provisions of Sub-section (8) thereof cannot be pressed into service and, shall have no effect. In these circumstances, the submission made on behalf of the respondents is without any merit and is accordingly rejected.

5. It was further argued on behalf of the State that in the background of this case and legal position applicable thereto the impugned order deserves to be set aside and case was liable to be remanded back to the Court below for disposal in accordance with law.

6. Now coming to the facts of the present case, it has to be seen whether this Court should accept the submission of the learned Advocate General for remand of the case after setting aside the impugned order or permit the parties to close the chapter and permit them to live peacefully.

7. The intention for making certain offences specified, in Section 320 is to permit the parties to have cordial relations among themselves may be as good neighbours or to retrieve their matrimonial differences if it is possible for them to live together or in the alternative to part the company instead of their litigating and entering into bouts of mud-slinging besides litigating from one Court to other. No doubt, in certain cases, leave of the Court is a must whereas in certain cases leave of the Court is not necessary. This appears to be aimed at maintaining peace and harmonizing in the society as well.

8. In the background of the present case, it appears that the case was got registered on account of some mis-understanding and mis-apprehension by Smt. Ranjana Kumari against the respondents which resulted in their being prosecuted u/s 307/498-A/506 of the Indian Penal Code, on account of more than the normal wear and tear in the married life of the couple. Further from Ex. PA, it is also clear that the wife never intended to get a case registered against her in-laws and in fact, the registration of the case is on account of some mis-understanding. Similar are the averments in application filed by the respondents vide Ex. PB. From both these exhibited documents, it is evident that the wife was used to city life whereas it was to take some time for her to adjust in village, where the respondents were residing, but that would not mean that their matrimonial bond has broken to an extent that it cannot be either repaired or they cannot live together at all. In this context, it may be appropriate to derive some guidance from the provisions of Hindu Marriage Act. A duty is cast upon the Courts in matrimonial cases to make attempt for re-conciliation u/s 23(2) of the Hindu Marriage Act, and Courts do make an attempt for bringing out reconciliation between the parties as far as possible. Besides this, prior to the amendment of 1976, a petition for divorce for mutual-consent was not warranted, however, looking to the past experience and considering the changing

social set-up, legislature permitted a petition for divorce to be maintained u/s 13-B of the Hindu Marriage Act, 1955 to be filed by the parties for dissolution of marriage by mutual consent. Similarly a marriage having irretrievably broken down is not a ground enumerated under the Hindu Marriage Act, yet by judicial interpretation and in the changed social set-up, Courts have now permitted divorce on this ground also where it was felt that there is no chance of parties living together or otherwise it would be of no use to allow a dead matrimonial bond to continue for times to come. In fact, looking to the approach of the Courts in the present day set-up, it is obvious that Courts in India by and large arc of the view that either the parties should live together peacefully in their matrimonial home and in case it is not possible for any reason whatsoever, then depending upon facts of each case the Courts have not hesitated in dissolving such marriages where matrimonial bonds have completely broken down, keeping in view that it was not in the interest of the parties to allow the such matrimonial bonds to continue without serving any purpose for both the parties.

9. It is not in dispute that the complainant -- Smt. Ranjana Kumari is living happily and peacefully at her in-laws place with the respondents, on the date when she filed Ex. PA and got her statement recorded on the same day i.e. 30-1-1996 before the Sessions Judge below, a son was born who was 5 months old. In these circumstances, it has to be seen whether it would be appropriate for this Court to send back the case after setting aside the impugned order to permit the complainant - Smt. Ranjana Kumari to compound the matter in the interest of justice as well as for the purpose of securing the ends of justice. It was urged on behalf of the State by the learned Advocate General by referring to certain case law that in no case the impugned order can be allowed to stand as it is contrary to law and all the Courts are precluded from acting contrary to law. Whereas on the other hand, learned counsel for the respondents has submitted that looking to the larger interest of the complainant, her children as well as in larger interest of family harmony, this is a fit case where this Court should, in exercise of its inherent power u/s 482 of the Criminal Procedure Code, permit the matter to be settled. Otherwise, according to the learned counsel for the respondents, after the case is remanded back, the prosecution case mainly hinges on the statements of Smt. Ranjana Kumari-complainant and her father Durga Dass, they would be forced to tell lies as in no case both of them would not like the matrimonial home of the complainant to be disrupted again. On this count also this Court feels that it would be in the interest of justice to permit the complainant- Smt. Ranjana Kumari, her father Durga Dass and respondents to compound the matter for which permission was accorded by the Sessions Judge below. Looking to the peculiar facts, background & circumstances of this case, no doubt, the impugned order passed by the Sessions Judge below was beyond his jurisdiction, yet this court is not setting aside the said order, particularly when the complainant is happily living together in her matrimonial home has begotten a male child who was 5 months of age on 30-1-96 and above all she, her children as well as respondents are now living peacefully on her matrimonial

home.

10. For the reasons set-out hereinabove, this revision petition is dismissed.